

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 353 be amended to read as follows:

- 1 Page 1, delete lines 1 through 7, begin a new paragraph and insert:
- 2 "SECTION 1. IC 5-28-6-3, AS ADDED BY P.L.191-2005,
- 3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JANUARY 1, 2007]: Sec. 3. (a) The general assembly declares that the
- 5 opportunity for the participation of underutilized small businesses,
- 6 especially women and minority business enterprises, in the biodiesel
- 7 and ethanol production industries is essential if social and economic
- 8 parity is to be obtained by women and minority business persons and
- 9 if the economy of Indiana is to be stimulated as contemplated by this
- 10 section, IC 6-3.1-27, and IC 6-3.1-28. A recipient of a credit under this
- 11 chapter is encouraged to purchase goods and services from
- 12 underutilized small businesses, especially women and minority business
- 13 enterprises.
- 14 (b) The definitions in IC 6-3.1-27 and IC 6-3.1-28 apply throughout
- 15 this section. A term used in this section that is defined in both
- 16 IC 6-3.1-27 and IC 6-3.1-28 refers to the term as defined in:
- 17 (1) IC 6-3.1-27 whenever this section applies to the certification
- 18 of a person for a credit under IC 6-3.1-27; and
- 19 (2) IC 6-3.1-28 whenever this section applies to the certification
- 20 of a person for a credit under IC 6-3.1-28.
- 21 In addition, as used in this section, "person" refers to a taxpayer or a
- 22 pass through entity.
- 23 (c) As used in this section, "minority" means a member of a minority
- 24 group (as defined in IC 4-13-16.5-1).
- 25 (d) As used in this section, "minority business enterprise" has the

1 meaning set forth in IC 4-13-16.5-1.

2 (e) As used in this section, "women's business enterprise" has the
3 meaning set forth in IC 4-13-16.5-1.3.

4 (f) A person that:

5 (1) begins construction of a facility or an expansion of a facility
6 for the production of biodiesel, blended biodiesel, or ethanol in
7 Indiana after February 28, 2005; and

8 (2) wishes to claim a tax credit with respect to that facility or the
9 expansion of a facility under any combination of IC 6-3.1-27-8,
10 IC 6-3.1-27-9, or IC 6-3.1-28-7;

11 must apply to the corporation for a determination of the person's
12 eligibility for the tax credit.

13 (g) Subject to this section, the corporation shall issue to each
14 qualifying applicant a certification that:

15 (1) certifies the person as eligible for the tax credits for which the
16 person applied;

17 (2) identifies the facilities covered by the certification; and

18 (3) allocates to the person the lesser of:

19 ~~(A) the maximum allowable a credit for which the person is~~
20 ~~eligible under IC 6-3.1-27-8, IC 6-3.1-27-9, or IC 6-3.1-28-11.~~

21 ~~or~~

22 ~~(B) a credit equal to the level of production demonstrated as~~
23 ~~economically viable under the business plan submitted to the~~
24 ~~corporation by the person.~~

25 (h) To qualify for certification under subsection (g), a person must
26 do the following:

27 (1) Submit an application for the credit on the forms and in the
28 manner prescribed by the corporation for the credit that is the
29 subject of the application.

30 (2) Demonstrate through a business plan and other information
31 presented to the corporation that the level of production proposed
32 by the person is feasible and economically viable. In making a
33 determination under this subdivision, the corporation shall
34 consider:

35 (A) whether the person is sufficiently capitalized to complete
36 the project;

37 (B) the person's credit rating;

38 (C) whether the person has sufficient technical expertise to
39 build and operate a facility; and

40 (D) other relevant financial information as determined by the
41 corporation.

42 (i) The corporation shall record the time of filing of each application
43 submitted under this section. The corporation shall grant certifications
44 under this section to qualifying applicants in the chronological order in
45 which the applications for the same type of credit are filed until the
46 maximum allowable credit for that type of credit is fully allocated.

47 (j) The corporation may terminate a certification or reduce an

allocation of a credit granted under this section only if the corporation determines, after a hearing, that the person granted the certification or allocation has failed to:

- (1) substantially comply with the business plan that is the basis for the certification or allocation; or
- (2) submit the information needed by the corporation to determine whether the person has substantially complied with the business plan that is the basis of the certification or allocation.

If an allocation of a credit is terminated or reduced, the unused credit becomes available for allocation to other qualifying applicants in the chronological order in which the applications for the same type of credit are filed until the maximum allowable credit for that type of credit is fully allocated. The corporation may approve an amendment to a business plan or a transfer of a certificate of eligibility in conformity with the terms and conditions specified by the corporation in rules adopted by the corporation under IC 4-22-2.

(k) The corporation shall give the department of state revenue written notice of each action taken under this section.

SECTION 2. IC 6-2.5-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. **For purposes of (a) The definitions in this section apply throughout** this chapter:

(b) "Kerosene" has the same meaning as the definition contained in IC 16-44-2-2.

(c) "Gasoline" has the same meaning as the definition contained in IC 6-6-1.1-103.

(d) "Special fuel" has the same meaning as the definition contained in IC 6-6-2.5-22.

(e) "E85" has the meaning set forth in IC 6-6-1.1-103.

(f) "Unit" means the unit of measure, such as a gallon or a liter, by which gasoline or special fuel is sold.

(g) "Metered pump" means a stationary pump which is capable of metering the amount of gasoline or special fuel dispensed from it and which is capable of simultaneously calculating and displaying the price of the gasoline or special fuel dispensed.

(h) "Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.

(i) "Indiana special fuel tax" means the tax imposed under IC 6-6-2.5.

(j) "Federal gasoline tax" means the excise tax imposed under Section 4081 of the Internal Revenue Code.

(k) "Federal special fuel tax" means the excise tax imposed under Section 4041 of the Internal Revenue Code.

(l) "Price per unit before the addition of state and federal taxes" means an amount which equals the remainder of:

- (i) the total price per unit; minus
- (ii) the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the total price per unit.

1 **(m)** "Total price per unit" means the price per unit at which gasoline
 2 or special fuel is actually sold, including the state gross retail, Indiana
 3 gasoline or special fuel, and federal gasoline or special fuel taxes which
 4 are part of the sales price.

5 **(n)** "Distributor" means a person who is the first purchaser of
 6 gasoline from a refiner, a terminal operator, or supplier, regardless of
 7 the location of the purchase.

8 **(o)** "Prepayment rate" means a rate per gallon of gasoline, rounded
 9 to the nearest one-tenth of one cent (\$0.001), determined by the
 10 department by determining the product of:

- 11 (1) the statewide average retail price per gallon of gasoline,
 12 excluding the Indiana and federal gasoline taxes and the Indiana
 13 gross retail tax; multiplied by
- 14 (2) the state gross retail tax rate; multiplied by
- 15 (3) ninety percent (90%).

16 **(p)** "Purchase or shipment" means a sale or delivery of gasoline, but
 17 does not include:

- 18 (1) an exchange transaction between refiners, terminal operators,
 19 or a refiner and terminal operator; or
- 20 (2) a delivery by pipeline, ship, or barge to a refiner or terminal
 21 operator.

22 **(q)** "Qualified distributor" means a distributor who:

- 23 (1) is a licensed distributor under IC 6-6-1.1; and
- 24 (2) holds an unrevoked permit issued under section 7 of this
 25 chapter.

26 **(r)** "Refiner" means a person who manufactures or produces
 27 gasoline by any process involving substantially more than the blending
 28 of gasoline.

29 **(s)** "Terminal operator" means a person that:

- 30 (1) stores gasoline in tanks and equipment used in receiving and
 31 storing gasoline from interstate or intrastate pipelines pending
 32 wholesale bulk reshipment; or
- 33 (2) stores gasoline at a boat terminal transfer that is a dock or tank,
 34 or equipment contiguous to a dock or tank, including equipment
 35 used in the unloading of gasoline from a ship or barge and used in
 36 transferring the gasoline to a tank pending wholesale bulk
 37 reshipment.

38 SECTION 3. IC 6-2.5-7-5 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) Each retail
 40 merchant who dispenses gasoline or special fuel from a metered pump
 41 shall, in the manner prescribed in IC 6-2.5-6, report to the department
 42 the following information:

- 43 (1) The total number of gallons of gasoline sold from a metered
 44 pump during the period covered by the report.
- 45 (2) The total amount of money received from the sale of gasoline
 46 described in subdivision (1) during the period covered by the
 47 report.

(3) That portion of the amount described in subdivision (2) which represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.

(4) The total number of gallons of special fuel sold from a metered pump during the period covered by the report.

(5) The total amount of money received from the sale of special fuel during the period covered by the report.

(6) That portion of the amount described in subdivision (5) that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.

(7) The total number of gallons of E85 sold from a metered pump during the period covered by the report.

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount which equals five and sixty-six hundredths percent (5.66%) of the gross receipts, including state gross retail taxes but excluding Indiana and federal gasoline and special fuel taxes, received by the retail merchant from the sale of the gasoline and special fuel that is covered by the report and on which the retail merchant was required to collect state gross retail tax. The retail merchant shall remit that amount regardless of the amount of state gross retail tax which he has actually collected under this chapter. However, the retail merchant is entitled to deduct and retain the amounts prescribed in subsection (c), IC 6-2.5-6-10, and IC 6-2.5-6-11.

(c) A retail merchant is entitled to deduct from the amount of state gross retail tax required to be remitted under subsection (b) ~~an~~ **the amount equal to: determined under STEP THREE of the following formula:**

STEP ONE: Determine:

~~(1)~~ **(A)** the sum of the prepayment amounts made during the period covered by the retail merchant's report; minus

~~(2)~~ **(B)** the sum of prepayment amounts collected by the retail merchant, in the merchant's capacity as a qualified distributor, during the period covered by the retail merchant's report.

STEP TWO: Subject to subsection (d), for reporting periods ending before July 1, 2008, determine the product of:

(A) ten cents (\$0.10); multiplied by

(B) the number of gallons of E85 sold at retail by the retail merchant during the period covered by the retail merchant's report.

STEP THREE: Add the amounts determined under STEPS ONE and TWO.

For purposes of this section, a prepayment of the gross retail tax is presumed to occur on the date on which it is invoiced.

(d) The total amount of deductions allowed under subsection (c) STEP TWO may not exceed two million dollars (\$2,000,000) for all retail merchants in all reporting periods. A retail merchant is not required to apply for an allocation of deductions under subsection

1 **(c) STEP TWO. If the department determines that the sum of:**
 2 **(1) the deductions that would otherwise be reported under**
 3 **subsection (c) STEP TWO for a reporting period; plus**
 4 **(2) the total amount of deductions granted under subsection**
 5 **(c) STEP TWO in all preceding reporting periods;**
 6 **will exceed two million dollars (\$2,000,000), the department shall**
 7 **publish in the Indiana Register a notice that the deduction program**
 8 **under subsection (c) STEP TWO is terminated after the date**
 9 **specified in the notice and that no additional deductions will be**
 10 **granted for retail transactions occurring after the date specified in**
 11 **the notice."**

12 Page 2, reset in roman lines 20 through 25.

13 Page 12, between lines 24 and 25, begin a new paragraph and insert:

14 "SECTION 21. IC 15-9-2-4 IS ADDED TO THE INDIANA CODE
 15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 16 JANUARY 1, 2006 (RETROACTIVE)]: **Sec. 4. The department shall**
 17 **work with automobile manufacturers to improve awareness and**
 18 **labeling of E85 base fuel and shall work with the appropriate**
 19 **companies to include E85 base fuel stations in updates of global**
 20 **positioning navigation software."**

21 Re-number all SECTIONS consecutively.

(Reference is to ESB 353 as printed February 24, 2006.)

Representative Gutwein